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IN THE

SUPREME COURT OF THE UNITED STATES

No. 578

AIRCRAFT SPECIALTIES, INCORPORATED,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

AIRCRAFT SPECIALTIES, INCORPORATED,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Aircraft Specialties, Incorporated, by and through its undersigned counsel, petitions for a Writ of Certiorari to review the judgment of the Court of Appeals for the Sixth Circuit entered in this case May 13, 1966, and this Court's denial of Petition for Rehearing entered June 23, 1966.

OPINIONS BELOW

The decision of the Court of Appeals (Attached hereto as Appendix A) is reported at 360 F.2d 600. The judgment of the Court of Appeals is attached hereto as Appendix B. The findings of fact, conclusions of law and order

of the Board are reported in the Transcript of Record, pp. 3a-14a.

JURISDICTION

The judgments of the Court of Appeals were entered on May 13, 1966 and June 23, 1966. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254 (1) and Section 10 (e) and (f) of the National Labor Relations Act, as amended, 29 U.S.C.A. 160 (e).

QUESTIONS PRESENTED

1. Whether the decision by the Sixth Circuit Court of Appeals herein is in direct conflict with its own decisions: *Standard Oil Co.* v. *N.L.R.B.*, 322 F.2d 40 (C.A. 6, 1963); *N.L.R.B.* v. *Wate, Inc.*, 310 F.2d 700 (C.A. 6, 1962); *N.L.R.B.* v. *Wooster et al.*, 236 F.2d 898 (C.A. 6, 1956), aff'd 356 U.S. 342; *McLean* v. *N.L.R.B.*, 333 F.2d 84 (C.A. 6, 1964) and in *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203 (1964).

2. Whether the Court of Appeals erroneously concluded that posting of a notice on Petitioner's bulletin board of a temporary reduction of one hour a week for economic considerations violated Section 8(a)(5) and (1) of the Act and therefore was in direct conflict with the decisions in the Eighth Circuit Court of Appeals in *N.L.R.B.* v. *Adams Dairy, Inc.*, 350 F.2d 108 (8th Cir. 1965), cert. denied 382 U.S. 1011 (1966).

3. Whether the Court of Appeals erroneously concluded that Petitioner's discharge of Ray Hanchett was for Union activities.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Extracts from Article I of Constitution of the United States of America and National Labor Relations Act, As Amended (61 Stat. 136, 29 U.S.C. 151, et seq.)

Article I, Section 1: "All legislative powers herein granted shall be vested in a congress of the United States, * * *

Article I, Section 8: "The Congress shall have the power; * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes; * * *

Section 8 (d) of the National Labor Relations Act: "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement, reached if requested by either party, *but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .*" (Emphasis added by Counsel).

STATEMENT OF THE CASE

This case involves three relatively simple facts. The real issues are the legal ramifications stemming from these facts.

1. Petitioner's business is managed and operated by its founder's widow—Zeta Shaw. She is afflicted with severely impaired hearing which is uncontroverted. Despite her protests that she cannot be compelled to sign a contract containing provisions she failed to hear or understand, the Union nonetheless closed the door before negotiations were satisfactorily concluded.

2. Petitioner posted on its Bulletin Board a notice of reduction of one hour a week motivated by economic considerations as a temporary measure.

3. Petitioner discharged Ray Hanchett as a trouble making employee. His mannerism and his attitude centered on defying Company rules designed to bring maximum efficiency. He frequently resorted to catcalls and horseplay and carried a radio on his person, all of which was disturbing other employees in the plant. Kindly warnings and mild reprimands meant nothing to him and for the good of the business and the continued efficient operation of the plant he was suspended and then discharged (J.A. 89a-90a-91a).

REASONS FOR GRANTING THE WRIT

Petitioner's Revered Constitutional Rights in Dealings with the Union

(a) The provisions of the National Labor Relations Act do not compel either party to sign an agreement. Neither the Petitioner nor the Union ever signed a valid and enforceable agreement. The Union abruptly closed the door to continued negotiations by its refusal to bargain with the objective of reaching a mutually agreeable contract. Had the Union refrained from shutting off negotiations, the parties in all probability would have come to a mutually agreeable understanding (J.A. 56a).

(b) Under our sacred system of free enterprise, management has the duty and responsibility of marshalling the affairs of the business in a manner consistent with accepted economic standards. The reduction of one hour a week was motivated by economic considerations (J.A. 84a). Respondent's business in the City of Lapeer, Michigan had been established for upwards of thirty years and it was Management's responsibility to discreetly define working schedules in harmony with accepted business procedures.

(c) It is our Constitutional heritage that one can conduct his business free from baleful interference so long as he does not transgress upon the rights of others.

INAPPLICABILITY OF CASES CITED BY THE SIXTH CIRCUIT IN SUPPORT OF ITS DECISION IN THE INSTANT CASE

Standard Oil Co. v. N.L.R.B., 322 F.2d 40 (C.A. 6, 1963).

"The Board found that the refusal of the Company to meet with the bargaining agents selected by the certified representatives of the employees was a violation of Section 8(a) (1) and (5) of the Act." (Quote from the recorded case).

N.L.R.B. v. Aircraft Specialties.

"Throughout the negotiations there was never a meeting of the minds, J.A. 79a-80a. Had the Union refrained from shutting off negotiations, the parties in all probability would have come to a mutually agreeable understanding." (Quote from Respondent's J. A. and Brief).

N.L.R.B. v. *Wate, Inc.*, 310 F.2d 700 (C.A. 6, 1962).	*N.L.R.B.* v. *Aircraft Specialties.*
"Board's findings that respondent violated Sec. 8(a) (5) and (1) by 1. refusing to bargain in good faith with the Union. 2. refusing to execute a contract, although the Agreements had been reached on all of its terms." (Quote from the recorded case).	"Respondent at all times endeavored to bargain in good faith with the Union representatives. J.A. 78a-79a-80a-81a." "Respondent never refused to bargain with the Union; on the contrary, the Union closed the door to further bargaining. J.A. 56a." "Of necessity" more "time was required to bridge the" gap in the "understandings reached by the two Counsels." (Quote from Respondent's Brief).
N.L.R.B. v. *Wooster et al.*, 236 F.2d 898 (C.A. 6, 1956), aff'd 356 U.S. 342. "The Board also held that the Company had interfered with its employees in violation of Section 8(a) (1) of the Act by soliciting them to abandon the Union and return to work." (Quote from the recorded case).	*N.L.R.B.* v. *Aircraft Specialties.* Nowhere in the record or in the Government's Brief is there to be found any interference with its employees by the Respondent.
McLean v. *N.L.R.B.*, 333 F.2d 84 (C.A. 6, 1964). "Assuming, that, as the Trial examiner has found,	*N.L.R.B.* v. *Aircraft Specialties.* There was no refusal to bargain by the Respondent.

the Union was 'lax and negligent' in this respect, and that the Union's conduct during this period was 'adverse to the interest' of the employees concerned, such conduct is no defense to the Respondent's (McLean's) refusal to meet and negotiate with the Union on and after July 3, 1962, when the certification had 3 more months to run."

Also to be observed:

Petitioner was certified April 17, 1963.

Petitioner filed charges January 16, 1964.

Petitioner filed Complaint March 6, 1964.

Petitioner's request for review is founded in part on the conflict of the Sixth Circuit of Appeals' Decision in the instant case with the meaning and intent of the Supreme Court in the Fibreboard decision, wherein Justice Stewart stated in his concurring opinion "Nothing the Court holds today should be understood as imposing a duty to bargain collectively regarding such managerial decision, which lie at the core of entrepreneurial control." 379 U.S. 223.

Petitioner's notice of reduction of one hour a week was purely an economic decision by management consequently mandatory bargaining obligation was unnecessary. *N.L.R.B.* v. *American Manufacturing Company of Texas,* 351 F.2d 74 (5th Cir. 1965).

Petitioner's discharge of Ray Hanchett was consistent with legislative history designed to preclude the Board from reinstating an individual who has been discharged for misconduct. HR Conf. Rep. No. 510, 80th Congress, 1st Sess. 55 (1947).

The Circuit Courts have long held that customary and ordinary operations of a corporation are purely of

management's prerogatives and not one that must be first bargained about with a Union. *Jays Foods v. N.L.R.B.*, 292 F.2d 317 (7th Cir. 1961); and *N.L.R.B.* v. *J. M. Lassing*, 284 F.2d 781 (6th Cir. 1960).

CONCLUSION

In the foregoing, Petitioner has set out compelling reasons why the Supreme Court should grant Certiorari and thereby review the facts and legal conclusions involved in this case. The Petitioner has presented to the Court the inapplicability of cases cited by the Sixth Circuit in support of its Decision in the instant case; also, the conflict which exists among the Circuit Courts in the Fibreboard decision restricting management in making economic decisions. This Court will at once recognize that Corporate management shall not be forced to bargain over matters which historically must remain exclusively under its control.

May it be said that to serve justice in the instant case this Court is respectfully urged to grant the Writ of Certiorari.

Respectfully submitted,

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Counsel for Petitioner.

APPENDIX A

No. 16514

United States Court of Appeals

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
AIRCRAFT SPECIALTIES, INCORPORATED,
Respondent.

ON PETITION for Enforcement of an Order of the National Labor Relations Board.

Decided May 13, 1966

Before: CELEBREZZE, Circuit Judge, CECIL, Senior Circuit Judge, and BOYD*, District Judge.

PER CURIAM. The National Labor Relations Board seeks to enforce its order issued against Respondent on September 18, 1964. The Board's decision and order are reported at 148 NLRB No. 121. The Board found that Respondent refused to bargain in good faith with the Union,[1] in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, hereinafter referred to as the Act. The Board also found that by discharging employee Ray

*Honorable Marion Speed Boyd, Chief Judge, United States District Court, W.D., Tenn., sitting by designation.

1. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO.

Hanchett for engaging in Union activity, Respondent violated Section 8(a) (3) and (1) of the Act.

Respondent is a small company engaged in the manufacture, sale and distribution of aircraft and automotive mechanics' hand service tools and related projects. The Union was certified as the bargaining representative of Respondent's production and maintenance employees on April 17, 1963, following a Board-conducted election. Thereafter, the parties spent nine months in attempting to negotiate a contract. In September, the Union and the Respondent reached an agreement on several issues. At this time, Respondent retained different counsel who was authorized to continue bargaining for the Respondent. On October 17, 1963, all the remaining issues were resolved. The Respondent's attorney told the Union representative that he could speak for the Respondent, and that an agreement had been reached. On October 22, 1963, a written draft of the agreement was given to Respondent's attorney. This agreement was rejected by the Respondent. A final meeting was held on January 7, 1964. The Respondent refused to sign the agreement, and refused to recognize the Union as the representative of the Unit certified by the Board. On January 8, 1964, the Respondent announced a one hour reduction in the workweek, without giving prior notice to the Union.

On January 8, 1964, Ray Hanchett, one of the organizers of the Union, and a member of the Bargaining Committee, approached the plant superintendent, and called his attention to the fact that a supervisor was working on a production job. The plant superintendent immediately removed the supervisor. Within a few minutes the Company's principal executive officer and secretary treasurer, Zeta Shaw, came over to Hanchett's press and asked him who was running the shop. Mrs. Shaw told Hanchett

neither he nor the Union was going to run her business. Mr. Hanchett explained that under the contract, the operation of a press was reserved for production employees. Mrs. Shaw replied, "you don't have a contract, and you're not going to have a contract". The next day Hanchett was discharged.

Based on the foregoing facts, we can only conclude that there was substantial evidence in the record to support the findings of the Board that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to sign an agreement embodying orally agreed upon terms, by refusing to recognize the Union as the representative of all employees in the Unit certified by the Board, and by unilaterally altering the hours of work, without notification to or consultation with the Union. See Standard Oil Co. v. National Labor Relations Board, 322 F.2d 40 (C.A. 6, 1963); National Labor Relations Board v. Wate, Inc., 310 F.2d 700 (C.A. 6, 1962); National Labor Relations Board v. Wooster Division of Borg-Warner Corp., 236 F.2d 898 (C.A. 6, 1956), aff'd 356 U.S. 342; McLean v. National Labor Relations Board, 333 F.2d 84 (C.A. 6, 1964); National Labor Relations Board v. Central Illinois Public Service Company, 324 F.2d 916 (C.A. 7, 1963), and Fibreboard Paper Products Cor. v. National Labor Relations Board, 379 U.S. 203.

We further conclude that there was substantial evidence to support the Board's finding that Hanchett was discharged because of his Union activities, in violation of Section 8(a)(3) and (1) of the Act.

The Order of the Board shall be enforced.

APPENDIX B

No. 16,514

United States Court of Appeals

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
AIRCRAFT SPECIALTIES, INC.,
Respondent.
} Order

BEFORE: CELEBREZZE, Circuit Judge, CECIL, Senior Circuit Judge and BOYD, District Judge.

On petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the petition for enforcement of the order of the National Labor Relations Board be and the same is granted and the order is hereby enforced.

No costs awarded. Rule 23(4).

Entered by order of the Court,
Carl W. Reuss
Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 578

AIRCRAFT SPECIALTIES, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. A1-A3) is reported at 360 F. 2d 600. The Board's Decision and Order (J.A. 12a-17a)[1] are reported at 148 NLRB 1127.

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[1] "J.A." references are to the printed record prepared for the court of appeals and filed with the petition.

JURISDICTION

The judgment of the court of appeals was entered on May 13, 1966 (Pet. B4). A petition for rehearing was denied on June 23, 1966 (Pet. 1). The petition for a writ of certiorari was filed on September 20, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's findings that petitioner refused to bargain in good faith with the Union and discharged an employee for engaging in union activity.

STATEMENT

On April 17, 1963, the Board certified International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, as the bargaining representative of petitioner's production and maintenance employees. At the Union's request bargaining negotiations commenced on April 26, 1963, at which time petitioner's principal executive officer, Secretary-Treasurer Zeta Shaw, asserted that no contract would ever be signed (J.A. 4a; 24a, 53a, 79a). Nevertheless, petitioner and the Union held numerous bargaining meetings. On October 17, 1963, the Union and petitioner's attorney reached complete agreement on the terms of a contract (J.A. 4a-7a; 21a-42a, 85a-86a).[2] The

[2] The Union representative wanted to see Mrs. Shaw, but the attorney stated: "Mrs. Shaw is quite upset. I'd rather you didn't bother her. I give you my word I'm speaking for the Company and we have an agreement" (J.A. 41a-42a).

Union then prepared a written draft embodying the oral agreement and submitted it to petitioner on October 22, 1963. Mrs. Shaw, however, refused to sign the written agreement, proclaiming that she would not recognize the Union as bargaining representative of the unit certified by the Board, but only as the representative of its members (J.A. 6a; 42a-46a, 74a-78a, 122a-156a). On January 8, 1964, petitioner, without prior notice to the Union, announced a one-hour reduction in the work week (J.A. 6a; 44a-46a, 86a).

The same day, employee Ray Hanchett, one of the organizers of the Union and a member of its bargaining committee, approached the plant superintendent and called his attention to the fact that a supervisor was working on a production assignment, in violation of the agreement between petitioner and the Union. The plant superintendent immediately removed the supervisor from the production job (J.A. 7a-8a; 60a-61a, 66a-67a, 72a-73a). Within a few minutes, Mrs. Shaw approached Hanchett and told him that neither he nor the Union would tell her how to run her business. Hanchett explained that he had merely pointed out to the plant superintendent that, under the contract, production work was reserved for production employees. Mrs. Shaw replied, "You don't have a contract and you're not going to have a contract" (J.A. 8a; 67a-68a). As a result of this incident, Hanchett was discharged the following day (J.A. 8a-9a; 67a-71a, 83a-84a).

The Board found that petitioner refused to bargain in violation of Section 8(a)(5) and (1) of the

Act by refusing to sign an agreement embodying the terms and conditions of employment which had been orally agreed upon, by refusing to recognize the Union as the representative of all the employees in the Board-certified unit, and by unilaterally altering the hours of work (J.A. 7a; 16a). The Board also found that petitioner violated Section 8(a)(3) and (1) of the Act by discharging employee Hanchett for engaging in union activity (J.A. 9a-1a, 16a). The Board ordered petitioner to cease and desist from the unfair labor practices found; to reinstate Hanchett with back pay; to sign, upon the request of the Union, the written agreement tendered to it on October 22, 1963; to bargain collectively upon request with the Union as the exclusive representative of the certified unit; and to make whole the employees for any loss of wages suffered by reason of the unlawful reduction in working hours (J.A. 1a-17a). The court of appeals enforced the Board's order in its entirety (Pet. A1-A3).

ARGUMENT

The only issue presented is whether substantial evidence supports the Board's findings that petitioner refused to bargain in good faith with the Union and discharged an employee because of his union activity. That issue does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491. In any event, the evidence summarized in the Statement demonstrates that the court below properly concluded (Pet. A3)

that there is adequate support for the Board's findings.

Petitioner's effort to show that the parties had not in fact reached an agreement on a contract (Pet. 5-7) ignores the evidence on which the Board's contrary finding was based. There is no conflict with *National Labor Relations Board* v. *Adams Dairy, Inc.*, 350 F. 2d 108 (C.A. 8), certiorari denied, 382 U.S. 1011 (Pet. 2) because the unilateral reduction in working hours which occurred here was quite different from the "contracting out" of the deliveries which that case involves.[3] Finally, the contention that Hanchett was discharged for cause (Pet. 7) is contrary to the Board's finding, sustained by the court below, that he was in fact discharged for union activity.

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[3] *National Labor Relations Board* v. *American Manufacturing Company of Texas*, 351 F. 2d 74 (C.A. 5) (Pet. 7), far from holding that an employer is not obligated to bargain about a decision that is motivated by economic considerations, holds just the opposite (*id.*, at 79). See also *Fibreboard Paper Products Corp.* v. *National Labor Relations Board*, 379 U.S. 203.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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OCTOBER 1966

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